RESUME OF REPORT O
THE COMMITTEE ON WOMEN
RIGHTS UNDER THE HINDU
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RÉSUMÉ OF REPORT OF THE COMMITTEE ON WOMEN'S RIGHTS UNDER THE HINDU LAW.

The Committee appointed by the Government of Mysore to consider the question of Women's Rights under the Hindu Law, has submitted a comprehensive Report, which is unanimous in its recommendations.

Preliminary Remarks.

Terms of reference, issue of questionnaire, etc.—Reference is made, under Preliminary Remarks, to the Order constituting the Committee and the terms of reference, the scope of the work before the Committee, the issue of two sets of questions, one somewhat detailed and the other very much simpler, and the replies received.

Replies and trend of opinion.—Apart from the mere number of replies received, the most satisfactory feature, from the standpoint of the task before the Committee, was the breadth of view, the comparative freedom from prejudice and the sincere desire for progress, evinced by the greater number of those who, individually and collectively, favoured the Committee with their views. In any general inquiry of this nature, says the Report, there is always to be met with a certain type of mentality tenaciously opposed to the smallest change in traditional practices and ways of thought. The present inquiry has been no exception to the rule; but what is really remarkable is the small proportion which the expressions of such an attitude bear to the trend of opinion in favour of beneficial change. A full analysis and summary of the replies received is provided in an appendix. The contingency of having to supplement the written replies by oral examination did not arise.

Towards the later stage of the Committee's work, advice and suggestions were sought, privately and informally, from a number of distinguished lawyers and judges, and those received were utilized wherever possible in the revision and final shaping of the Bill.

Contents of Report.—The Report, which consists of 223 pages, besides appendices, is drawn up in seven chapters. There is, first, an Introduction, touching upon various points of general interest and importance; next, detailed surveys of special topics, namely, Inheritance, Joint Family Incidents and Adoption, Women's Full Estate, Women's Limited Estate, and Maintenance; and, finally, the text of a Bill, which precisely embodies the Committee's recommendations in a form adapted for legislative action.

Introduction.

Nature and development of Hindu Law.—The first or introductory Chapter begins with a brief general account of the nature of the Hindu Law, its present condition, and its capacity for further development.

In accordance with a common tendency in early civilizations to group all rules of human conduct under the purview of religion, the subject of law was, in India, usually treated as if it was part of religion and ethics, under the general name of *dharma sastra*. The rules of Hindu Law are thus an admixture of morality, religion and law, and it is not often easy to determine where religion ends and morality or law begins. Nevertheless, writers on Hindu Law endeavour to classify precepts, by reference to their objects, into those which are mandatory and those which are merely recommendatory.

Sources.—The sources of the Hindu Law are next passed in review, with their respective contributions to its development.

Smritis or Dharma Sastras.—The Smritis, or Dharma Sastras, are the earliest sources of positive law as such. They are of varying force and authority, according to their purport, context or object, and to the conditions, times and localities to which they are intended to apply. Foremost among them is the Code of Manu; and next in date and authority that of Yajnavalkya, which is practically the starting point of Hindu law in the Mitakshara provinces.

Commentaries.—In modern practice, the Dharma Sastras are of less importance than the Commentaries and Digests based upon them; and these, in their turn, yield place to the decisions of the constituted Courts. The commentaries, written by great scholars, helped to mould the law, under colour of interpretation, into harmony with the requirements of society. It is well understood that the commentators are at the present day the real authorities on the subject.

Usage.—Usage has been another principal source of law from the earliest time. Clear proof of usage will outweigh the written text of the law. Courts are expected not to impose upon the people any rule of law, simply because it finds a place in the Institutes of Manu or Yajnavalkya, without ascertaining whether it is living law or dead letter.

Judicial decisions.—While the decisions of the Courts of law have played a large part, not only in ascertaining and supplementing, but even in many respects modifying, the Hindu Law, it is pointed out, at the same time, that the law has developed less slowly at the hands of the judges than at the hands of the indigenous commentators, and that, on the whole, the influence of the Courts has tended to retard rather than to stimulate its natural growth. Whereas the law as originally administered was elastic, and had grown by the assimilation of new usages and the modification of ancient text law under the guise of interpretation, there has been

a marked arrest in its development after the institution of British courts of justice. The reasons for the arrested growth are examined in some detail, and the conclusion is expressed that Hindu Law is becoming set and crystallized under existing conditions, instead of remaining fluid and adaptable, and that the only cure for this state of things lies in the enactment of a uniform, simple and codified law.

Hindu Law not a ready-made Code, nor exhaustive.—In the result, it is pointed out that what is being administered today as Hindu Law is in no sense a Code of ready-made law, but a composite body of rules and exceptions, of principles and precedents, which have developed with time, circumstance and necessity. It is a sort of Common Law, slowly built up in the course of the ages on a solid foundation of accepted rules and established usages, moulded and interpreted by commentators and judges, and altered here and there by legislation mostly of an indirect character.

According to judicial dicta, questions of Hindu Law never have been nor will be decided with reference solely to what the law was when originally propounded by Manu, or the very earliest writers. The Hindu Law which the courts administer, and are bound to administer, is that which they, availing themselves of all the sources of information at their command, find to be the law as recognised and accepted and acted upon by the general body of Hindus for the time being.

The Hindu Law, moreover, is not and does not profess to be exhaustive. It is a system upon which new customs, and new conceptions not repugnant to the old law, may be and have been engrafted from time to time, according to circumstances and the needs of society.

Hindu Law not unchangeable or incapable of improvement.—In the next place, the rules of the Sastras, though in theory regarded as divine ordinances, and not as commands of a political sovereign, are subject to considerable latitude of interpretation. In so far as they relate to secular as distinguished from purely spritual matters, they are not inflexible, but may be modified or replaced, if repugnant to popular feelings, or if, in the opinion of the learned, the exigencies of Hindu society require a change.

It is noted at the same time that, in those portions of the Hindu Law which are now administered by the Courts, the original religious element, if any, is not prominent and is hardly adverted to.

Finally, emphasizing the remarkable capacity of the Hindu Law for assimilation, it is pointed out that the fact that it has undergone and absorbed many a change of importance in its long career of evolution, and still flourishes with vigour, is proof positive of its inherent vitality, and of its abundant capacity to incorporate improvements adapted to the wants and conditions of the times, and not uncongenial to the genius of the people.

Instruments of legal reform.—The Introduction next deals with the instruments of legal reform,—the agencies which, in a living community, as in a healthy living body, perform the function of

readjustment, of the moulding of laws and institutions to suit changing needs and conditions.

Among these agencies are mentioned four :—custom or usage, individual choice, interpretation, and legislation.

Custom or usage.—Usages have grown side by side with the body of law, revealed or promulgated, and have tended to modify it steadily, if imperceptibly. "Immemorial custom is transcendent law," according to Manu. The fullest effect is given to custom both by courts and by legislation.

Individual choice.—Individual choice or preference is exercised mostly when dispositions of property are made by means of alienations, gifts and bequests. Reference is made, in this connection, to the recent origin of the practice of testamentation (will-making), as also (incidentally) to the proposal made by some legal reformers that option should be given to an individual, or to any caste or community, to elect the provisions as to succession to property contained in the Indian Succession Act, in preference to rules of the Hindu Law.

Judicial interpretation.—Apart from individual needs and preferences, social necessities and social opinions are always in advance of law ; and the principal agencies through which the law is brought into harmony with society are judicial interpretation and legislation.

Judicial interpretation, however, has only a narrow range of elasticity. It is open to the charge of being "haphazard, inordinately dilatory, and inordinately expensive, the cost of it falling almost exclusively on the litigants," besides being largely the decisions of foreigners who are under the thraldom of precedents and the analogies of a foreign law. It is, however, acknowledged that such progress as Hindu Law has made for nearly a century past has been due almost entirely to the action of the Courts.

Legislation.—Legislation is the last, and usually the most effective, of the ameliorating agencies. Its use becomes increasingly frequent in advanced societies, with growing experience of its efficacy in achieving the desired objective. It has also the incidental but important advantage of making the laws of the country easily available and familiar both to the administrators of justice and to the people at large.

Speaking with special reference to the Hindu Law, the Committee postulates that so venerable an edifice should not be altered needlessly or in the spirit of iconoclasm, or with the aim of producing something quite new that may look or work better. Every proposal for change must be jealously scrutinised and examined on its own merits, without prepossession and without prejudice. And, incidentally speaking, a proposal which seeks to follow a rule or custom definitely in operation in other parts of India following the same Hindu Law, even if it be of a different school, may well be regarded with greater favour than one which seeks to proceed entirely on new lines.

Some common objections to legislation.—All this being taken for granted, the Committee proceeds to examine and to meet at some length objections usually advanced against proposals for improving the law through legislation.

It is impossible in a bare summary to do justice to a connected thread of exposition. All that can be done here is to quote from the Report a striking phrase or two by way of illustration of the Committee's viewpoint.

Interference with religion.—"Hindu Law as it is administered to-day has no obvious or necessary connection with people's religious beliefs or practices." "There is nothing in Hindu religion as such which stands in the way of giving women the rights which may be deemed justly due to them." "Religion—rightly understood—can never be endangered by the application of the highest ideals to existing conditions." Objectors are reminded of Mill's neat retort that "every established fact which is too bad to admit of any other defence is always presented as an injunction of religion."

Effect on feminine morals.—The objection that giving women rights of property will prejudicially affect their morals, "besides being a coarse-minded and untrue view of the nature and tendencies of the gentler sex, betrays a serious misconception as to what the law actually is, and some inconsequentiality in the reasoning." "The traditional atmosphere of Hindu homes, the ingrained modesty of the women, and the care habitually bestowed on their well being," are enough to dispel fanciful apprehensions in regard to their morals. "Those who put forward such an argument are not realising that it amounts in substance to a serious and unwarranted reflection on the purity of Indian homes, not to speak of the ethical standards of the men themselves."

Women's incapacity for management.—The argument that women are incapable of managing properly "is an archaic notion, an offshoot of the doctrine of dependence." "Women in India are usually much more careful with money than men, and have not the same opportunities and temptations to speculation or wasteful expenditure." John Mill's testimony to the marked capacity of Indian women for the management of great affairs is illustrated by reference to the recent histories of Mysore, Bhopal and Travancore.

Attitude of women towards reform.—The argument based on the supposed absence of a demand for reform on the part of women, "takes too much for granted. It is not a fact that women who are educated and intelligent accept the situation as at all satisfactory." "Considering the ignorant and backward condition of the bulk of the womanhood of the country, it ought not to be surprising that the demand for change is not even more insistent than it is. The fact merely proves the imperative need for wider and better facilities for education among the sex."

Policy of religious neutrality.—While the policy of religious neutrality has, in the main, been carried out in its true spirit by the

Government in British India, the legislature has, nevertheless, on various occasions interfered in the past, and made material alterations in the laws of the people, when such interference was considered just and proper.

The principle of religious neutrality was adopted at a time when British administrators had no means of ascertaining the views of the people and the true rules of Hindu Law. But now it is the Hindu members of the Legislature who are or will be introducing Bills dealing with those rules, and they will have the support of a large number of Hindus themselves.

Then, again, what may be a matter of right policy on the part of a purely foreign administration need not necessarily set limits to the constitutional powers of a legislature established, more or less, on a national basis, on which all interests likely to be affected by its acts are adequately represented.

Personal Laws.—"That legislation must not be undertaken in regard to the personal laws of the Hindu or any other community, without the unanimous support of that community, is surely an extravagant claim. If accepted, it would be tantamount to prohibition of legislation in any shape." "In regard to measures of legislation, as in other matters affecting a whole class or people, the only correct and feasible test is furnished by the principle of aiming at the greatest good of the largest portion of the community without sacrificing the legitimate interests of any."

"Legislative enactments, even where they purport to amend the personal law of a community, need not necessarily involve any active interference with its religious beliefs and practices." In any case, "no civilized State, anxious for the true interests of its people, can allow bad customs to take shelter under the skirts of religion."

Codification.—"Codification of the vast expanse of the Hindu Law may be the ideal, but is neither necessary nor practicable at present." "An ambitious project of this sort is the surest way of blocking necessary legislation on those points where the need for change is most pressing." "It is far better in every way to take up those points first as to which the existing law is found to work with special hardship or injustice, or the decisions of the courts are in hopeless conflict, or the sentiments of the community have outgrown the doctrines of the law."

Advance by instalments.—The over-cautions attitude which deprecates "undue haste" in matters of legal and social reform is compared to the method favoured by some family physicians of administering weak and ineffective doses of medicine to a chronic patient, and contrasted with the attitude expected of the specialist called in at a crisis or of the skilled surgeon confronted with an operation necessary to save life.

Function of Committee.—In the view taken by the Committee of its true function, "its duty is not to rest content with suggesting small instalments of reform which will be satisfactory to none, or at

best merely serve to whet the appetite for further instalments, but to make a full and careful survey of the entire field, and to submit a comprehensive and practicable scheme of reform, which, without entailing violent departures from past tradition and progress, will serve to meet the just and reasonable requirements of the immediate present. The Committee is not engaged so much in trying to provide helpless females with the means of subsistence, or in assigning higher places in the order of succession to some heirs as compared with others, as in helping to put on a sound basis the important question of the Hindu Law rights of women."

Civilization and position of women.—Some positive considerations are next urged in the Report in favour of remedial action. Attention is drawn to the very intimate connection that exists between any given stage of civilization and the position which it assigns to women. And out of the abundance of testimony forthcoming in support of this fact, a few selected samples are quoted.

The position in its bearing on Hindu civilization is thus summed up :—

"No impartial observer will deny that the unsatisfactory position of our women as regards physical health and stamina, educational progress, and legal status, has been a material factor in the backward condition of the country, even from the political point of view."

"It is impossible for a virile race to spring up and assert itself so long as the women are kept weak and ignorant. Nor can it be denied that it would make a tremendous difference to our country if our women enjoyed equal privileges with men as regards inheritance and succession, education and social standing and the multifarious opportunities of life."

"The fact that the future of the Indian race depends so largely on the position of its women is (—apart from the duty of society to accord to either sex what may be justly due to it—) itself sufficient justification for seeking the aid of legislation as the one effective means now available of accelerating progress."

Special advantages in Mysore in the matter of reform.—After stressing certain special advantages which exist in a Hindu State like Mysore but not to the same extent in British India, in the matter of effecting improvements in the law by legislation, the introductory chapter concludes :—

"It is well to remind ourselves that Mysore has ever been in the van of progress. In the past it has taken the lead in the eradication of evil social customs like infant marriage and the employment of devadasis in Muzrai institutions. It has in recent years gone far on the way towards enfranchising women for citizenship, by the recognition of women's eligibility to serve on District and Municipal Boards, the Senate of the University, the Representative Assembly and the Legislative Council of the State. It may well have the privilege now of setting an example to other parts of India in so important and far-reaching a matter,—one that is both necessary and inevitable,—as the final emancipation of women from unjust traditional restrictions and civil disabilities."

Inheritance.

Chapter II is devoted to the important question of Inheritance.

Mistaken view about early position of women.—It begins by referring to the view which used to be current, especially among western writers, that the women of India in ancient times were no better than chattels, that they were incapable of holding property in their own rights, and that their status and proprietary capacity were only slowly and gradually elevated in much later centuries. Fuller research, it is pointed out, tends to qualify such a view materially. The aphorisms of the sage Jaimini, the founder of the Mimamsa system, who lived several hundred years before the Christian era, corroborated by other evidence, point, on the other hand, to the conclusion that, in the earliest times of which we have any record, the status of women was on a par with that of men.

There is good reason to think that women in those early times were not denied the privilege of acquiring learning, sacred or secular, that they underwent the initiation ceremony, and were entitled to study the Vedas, and that they were freely permitted to take part in sacrifices. Wealth, according to an ancient Smriti, is produced for the sake of solemn sacrifices; and since women were allowed to join in them, the various modes of acquisition of wealth, including inheritance, must have been open to them.

Deterioration of conditions.—Such a state of things, eminently favourable to the legal capacity and just interests of women, does not appear to have endured. A time came when physical prowess was a social and political necessity for protecting person and property from the attacks of enemies. Males were a fighting asset; but women were weak beings, devoid of power, and utterly incapable of preserving the family property from the encroachments of powerful neighbours. They were looked upon as mere dependents upon their husbands and fathers, and no woman could possibly set up a claim to inherit so long as there were any males in the family.

Conditions gradually changed for the worse, and the tendency to ignore the claims of women reached its culmination during the time of Baudhayana.

It is possible thereafter to trace some improvement, and various commentators of later times also did something in this direction. But the downward movement already set on foot could not be completely arrested by such partial alleviations. Women were too weak to claim their proper rights, and men too selfish to concede them voluntarily. The texts of the earlier lawgivers, says the Committee, have helped to build a dead wall against attempts in the way of substantial progress.

Restrictive texts.—The texts usually relied on are two of Manu, and a third of Baudhayana. While each one of them has served

to limit some one aspect of women's rights, the later rules about women's exclusion from inheritance are almost entirely based on the text of Baudhayana.

Baudhayana's view.—He himself relies, in support of his opinion, upon an earlier verse suppose to be of Vedic origin—'*nirindriya hyadayascha striyo matah*'. But it is explained, by reference to the context and to the opinions of commentators and scholars, that this verse can have no possible application to the eligibility or otherwise of women to inherit property, but refers to something quite different, namely, women's right to participate in the ritual of the soma juice offerings and to receive a share of such offerings.

The Report goes on to observe that, after all, these and other texts, irrespective of their applicability or authority, merely indicate what was the prevailing practice at the time when they were composed, and cannot govern the conditions of Hindu society for all time. The fact that the special conditions of one stage of civilization entailed a restriction of feminine freedom and capacity, is no reason why women should be excluded for all time from the exercise of rights from which nature has not necessarily debarred them.

Women's dependence not social or legal.—At this point it is emphasized that the dependence ascribed to women by some of the earlier texts did not imply any inferiority of social status, much less personal degradation or bondage. Nor did it by itself involve any curtailment of legal capacity. Women were by nature weak, and unable to bear the turmoils of the world and to stand up against the terrors and temptations of life without guidance and control; and, in the circumstances, the assertion of their unfitness for independence seems to have been really meant as a measure for their own protection. The so-called dependence of women under the early Hindu Law was thus nothing more than a sort of moral dependence.

Educated Hindus were doubtless capable of getting rid of the worst features of the doctrine of women's dependence. By availing themselves, among other factors, of the liberal attitude of commentators, some of whom like Vijnanesvara were distinctly favourable to women's rights, they could well have developed the law more nearly in consonance with modern conditions and requirements.

Prejudicial effect of decisions.—The decisions of the British Courts have, however, made this difficult by perpetuating the doctrine in some of its worst features, and even turning it to fresh uses calculated to restrict the rights of Hindu women. In the face of the clear assertion of the Mitakshara that want of independence did not mean defect of ownership and did not disqualify women from proprietorship, the Privy Council have made the texts about dependence the basis for laying down that the widow's estate under the Mitakshara is a qualified one.

The result, says the Committee, has been most unfortunate. A doctrine originally intended to ensure adequate protection to women, even in derogation to some extent of their personal independence, has operated to curtail their civil rights of property and inheritance.

Effect of exceptions.—Proceeding with the consideration of the development of women's legal capacity, it is shown that Manu, Yajnavalkya and other lawgivers expressly declared the right of certain females to inherit, namely, the wife, the daughter, the mother, and the paternal grandmother and great-grandmother, thereby virtually abrogating the texts about the incompetence of women *as women* to inherit property. The exceptions in this matter are so serious and important that they may be said to displace the rule as an operative one at the present day.

Present position.—Prejudice and conservatism are, however, still so strong that in Bengal, Benares and Mithila no female is allowed to inherit to a male unless she is expressly named as an heir in the texts; and as only the five referred to are expressly named, they are alone recognised as heirs.

The doctrine that women inherit only by virtue of express texts has not, however, been accepted in the Madras and Bombay Presidencies. In the Madras Presidency, certain female relatives, though not specially referred to in the texts, nor expressly mentioned in the Mitakshara, have been recognised as heirs; namely those who can come in as *bandhus* or *bhinnagotra sapindas*. They include the sister, half-sister, son's daughter, daughter's daughter, brother's daughter, sister's daughter, and father's sister. The Madras School has not, however, found it possible to admit the widows of *gotraja* sapindas as heirs, and, on this ground, has been obliged to reject the claim of the stepmother.

In the Bombay Presidency the position has been much more favourable to the heritable claims of women. There the so-called Vedic doctrine of the general exclusion of women from inheritance is not followed. A large number of female relatives have been admitted to heirship, on the strength of Manu's text, "To the nearest sapinda, *male or female*, the inheritance next belongs."

Sex disqualification not accepted in Mysore.—It is shown by reference to the decided cases that the view that a woman is by her sex disqualified from claiming a right of inheritance is no longer accepted in Mysore.

Explicit declaration of eligibility required.—The whole position is then summed up, and reasons are given why the law should definitely and explicitly recognize the principle that sex in the case of women shall not be a ground for exclusion from inheritance or other civil right; also that, where a female is, according to the recognized canons, a competent heir, she shall not be deemed to be disqualified merely because of the absence of an enabling text in her favour. Eligibility would then be determined, in the case of

either sex, by principles of general application, and not depend on arbitrary or incidental considerations.

Test of heirship.—The question what is the decisive test of heirship under the law of the Mitakshara is then examined.

The matter is in itself a somewhat simple one, but has been complicated by efforts to reconcile, if not to mix up, two essentially distinct streams of thought. One has its source in the idea of natural love and affection and the community of blood among the living. The other is the outcome of the notion of spiritual benefit, based on community in the offering of religious oblations to the dead.

According to the Mitakshara, "sapinda" relationship arises between two people through their being connected by particles of one body. Such relationship is based, not on the presentation of funeral oblations of food and water, but *on descent from a common ancestor, and, in the case of females, also on marriage with descendants* from a common ancestor.

To derive the right of succession from the presentation of offerings is to confuse consequence with cause, the obligations of an heir with the heritable right. For, as is now generally admitted, the true view is that the *pinda* follows the estate as a duty, rather than that the estate is given to a person because of his offering the *pinda*. "It is not a maxim of the law that he who performs the obsequies is heir, but that he who succeeds to the property must perform them."

The principle that succession under the Mitakshara law depends upon propinquity, and not upon religious efficacy, has been settled by rulings of the High Courts and accepted by the Privy Council. The right to offer oblations, which, at best, may occasionally be serviceable as a measure of proximity in doubtful cases, should not be elevated into a determining factor by itself, much less allowed to qualify the main principle, as is done under the Dayabhaga law.

After all, the Committee observes, fixed rules as to succession have been established for centuries, and it is these rules that are really followed in practice in both the Schools. In the generality of cases, spiritual efficacy and propinquity run more or less on the same lines; and in many instances the same person would be the preferential heir, whichever of these tests were applied.

Consanguinity and propinquity.—The conclusion reached is thus set forth: The right of heirship under the law of the Mitakshara arises simply and solely from nearness of blood relationship. Heritability, or the general fitness to inherit, depends on *consanguinity*; while the specific position in the line of heirs is determined by *propinquity* or proximity of relationship. These twin tests, and certain general rules derived from them, form a sufficient basis for determining, not only individual heirship, but the order of preference generally among the different class of heirs.

Rules as to priority.—Various rules, now current, for determining priority among heirs, are then reviewed. The Committee's own

recommendation as to the few simple general rules required is annexed to the detailed order of succession embodied in the Bill.

Limitation of sapinda relationship.—The advisability is emphasized (on grounds of analogy, logic and authority, as well as of practical convenience and the requirements of life and litigation) of limiting *sapinda* relationship, for purposes of inheritance, to three degrees in descent, ascent and collaterally, counting from and exclusive of the propositus.

Position of bandhus.—The position of *bandhus*, or cognates, is next considered. These relatives, however near to the propositus from the point of view of blood, are at present postponed to all gotraja sapindas, and even to the remotest samanodaka of the fourteenth degree.

The treatment of *bandhus* under the Mitakshara is in marked contrast with that accorded to them by the Dayabhaga ; for the latter allows the *bandhus* to come in along with, instead of after, the *gotraja sapindas*, and the principle of religious efficacy is the sole test applied in deciding between rival claimants.

The fact is stressed that the postponement of bandhus as such to all agnates, down to the most distant samanodaka, seriously prejudices the rights of female heirs nearly related, and, besides, is scarcely in keeping with the principle of consanguineous propinquity.

Treatment of female relatives.—So also, the general preference of male to female heirs, even though the latter may be nearer in degree, not only is opposed to the principle of blood relationship, but cannot also be explained on any intelligible theory of religious efficacy.

The half-hearted, if not unsympathetic, treatment of the claim of female relatives generally, in Madras and Mysore, is contrasted with the liberal and progressive spirit distinctive of the Bombay School in the matter of the admission of women to succession. Courts and lawyers there no longer countenance the harsh and narrow doctrine of the general incapacity of women for inheritance, and its corollary that women can only inherit under a special text. They take the term *sapinda* in the widest sense, as importing consanguinity merely, and without the limitation, imposed elsewhere, that female sapindas can only inherit when they continue in the *gotra* or family of which they claim to be heirs. "Gotraja" is construed in the same sense in respect to both sexes, namely, as a person born in the family ; and marriage makes no more difference in this respect to a female than it does to a male. The most prominent example of this broad spirit is the fact that the sister, who is only a distant bandhu in Southern India, is recognised in Bombay as a gotraja. Not only full sisters but also step-sisters inherit. So daughters of descendants, ascendants and collaterals within six degrees, inherit as bandhus in Bombay ; for instance, both a brother's daughter, and a sister's daughter.

Widows of gotraja sapindas.—The treatment of the widows of *gotraja sapindas*, it is pointed out, affords another very striking contrast between Southern India and Bombay as regards the attitude in which the same law, that of the Mitakshara, is administered.

While other Schools of law never allow a widow, as such, to inherit to any one but her own husband, the Bombay School allows widows of gotraja sapindas to inherit to any one to whom their husbands if alive would have been heirs. That is, they stand in the same place that their husbands, if living, would respectively have occupied, subject always to the admitted right of any person whose place is specially fixed, as a sister, mother or the like. Western Indian lawyers give its full effect to the general principle that succession goes in the order of *sapinda* relationship, in its broad sense, of connection by blood. On this principle the daughter-in-law is also a *sapinda* in Bombay.

Order of succession.—The arrangement of the various classes of heirs under the Mitakshara system is dealt with in some detail.

Propinquity or proximity, which is the first principle of the Mitakshara law of succession, is applicable, not only to *gotrajas* or agnates, but also to *bandhus* or cognates.

While Manu laid down the *principle* of the law of inheritance (that to the nearest kinsman the inheritance next belongs), it was Yajnavalkya who first fully enumerated the *class of heirs* and determined the *order* in which they should succeed. The course of inheritance to the separate estate of a sonless man is briefly indicated in a text of Yajnavalkya which runs:

"The wife, and the daughters also, both parents, brothers likewise and their sons, *gotrajas* (agnates), *bandhus* (cognates), the pupil and the fellow-students, these take the heritage in order, the next on failure of the preceding."

Classified table of heirs.—On the basis of the above text elaborate tables of succession have been prepared by various authors, which, while agreeing in the main, differ in slight particulars. That given by Dr. Sarvadhikari is taken as basis for a classified list indicating the general course of succession.

Comments.—The Report observes that any one looking over this list will immediately be struck by the fact that, taken as a whole, it is not only a convenient but also a strictly natural classification.

First come those persons who constitute a man's "family" in the true sense,—those who derive their kinship from him, being linked to him by the bond of birth or marriage or both, and thus have become, so to speak, his own "body" (or flesh and blood) by "the community of corporeal particles," and who, by that fact as well as by the bond of natural love and affection and by their dependence on him, are legally and morally entitled to maintenance at his hands. In this sense a man's family may well include his parents also, though, of course, the father is in his turn the head of his own family. Next come the "members of the family" (in the same sense) of his father, then those of his grandfather, and then those of his great-grandfather. The cognates, because they belong to other *gotras*, come in after all these; and they are arranged in order, according as they are related to the man directly or through his father or through his mother.

The one fault, and a serious one, which attaches, not so much to the classification itself, as to its contents, is the omission to bring into each family several relations (all within three degrees) who naturally and properly belong to it. They are at present placed lower down or omitted altogether, either because they are themselves females, or because a female link intervenes between them and the "head" of the family. Those who are taken *into* the *gotra* by marriage (becoming *sagotras*) are even worse treated in this respect than those who, having acquired the sameness of *gotra* by birth, pass into a different *gotra* on their marriage.

It is not possible, in this brief resume, to refer to the comments made by the Committee touching the position of the various heirs in the order of succession. There is place only for one or two noticeable observations detached from their context.

"Just as the widow of the propositus affords at present the solitary illustration of the acquisition by females of rights of inheritance in the families into which they are married, the case of the daughter forms a striking exception to the generality of the rule which seeks to deprive females on marriage of all rights of inheritance in the family of their own birth."

"Another striking illustration of the fact that 'blood is thicker than water,' even in the matter of the arrangement of heirs, and that the true informing principle of consanguinity can occasionally break through the meshes of narrow and harsh conceptions, is afforded by the case of the daughter's son. The daughter's son is really not a *gotraja sapinda* at all, but only a *bandhu*. He is, however, ranked with *gotraja sapindas* for purposes of succession, and comes next after the daughter, and well in advance of the brother."

The daughter's son, succeeds, not through his mother, but directly to his own grandfather. But as the daughter is a nearer heir, he cannot succeed to his grandfather's estate so long as there is in existence any daughter who is entitled to take either as heir or by survivorship to her other sisters. This, which is the right principle, has been materially infringed in the case of the sister, who ought to come before, but is now put far below, the sister's son.

After touching upon the course of decisions on the point just alluded to, the Report says :—"This is eminently a case in which the legislature can alone set the law right on an important question of principle on which the Courts have diverged, as well from the ordinary landmarks of natural love and affection, as from the ancient and safe moorings of proximity of kinship. Fortunately, the legislature of British India has intervened quite lately in this direction. Under Act II of 1929 the sister has been put definitely above the sister's son." The right position of these heirs is then indicated.

The case of the stepmother is characterized as a peculiar one, offering a striking instance of divergence between principle and usage. It has been held in Madras that the stepmother is no heir

at all, and cannot take in competition with any *sapinda* of the deceased. This appears to the Committee to be an extreme view to take. A stepmother is stated by the texts to be equal to a mother; and the son of one wife is the son also of the rest and, as such, bound to present oblations to all. The *sapinda* relationship arises, not only by birth, but also by marriage, the wife thereby becoming one with the husband. And even if the stepmother has not co-operated in the act of giving birth to the son, she may well be regarded as on the same footing as a mother by adoption. In any case, the stepmother, as the wife of the father, is herself a *sagotra sapinda*, and as such entitled to the proper rights of a female *sagotra sapinda*. As a matter of fact, this is exactly the view that has commended itself to the lawyers of Western India and been declared by the Courts in Bombay. The inclusion of the stepmother among heirs is recommended by the Committee, her proper place being indicated.

Remarks similar to those already made apply to other widows of *gotrajas*, such as the widows of the brother's son and grandson.

Recommendations.—Among other recommendations made in this part of the Report, the following may be adverted to :—

Such of the descendants of the son and daughter (within three generations) as are not now admitted as heirs should be included, but without prejudice to the position now assigned to the parents on account of the closeness of the tie of blood and affection which unites the latter to the propositus. In the case of such comparatively more distant and more numerous relatives, it would be far-fetched and extravagant, if not even positively unkind, to insist on a formal gradation in order of priority; all of them are equally distant from the propositus, and presumably all are equal to him in strength of affection, and all may, it is suggested, take at once and in equal shares.

The widow of the predeceased son should be included among heirs, as also the widows of grandsons and great-grandsons, their right places being indicated.

The inconvenient principle of survivorship should be done away with in the case of the descendants of sons and daughters, and of female relatives by marriage, thereby enabling them, in their respective degrees, to take the heritage simultaneously and in equal shares.

For reasons explained, and following the example of recent British Indian legislation, sons adopted to a female relative after her death should be excluded.

Table of heirs to be enacted, with some general rules.—The Report indicates the exact position to be asssigned to female heirs in the order of succession. This, obviously, requires that the position of the male heirs coming in juxtaposition on either side should also be shown. It is suggested that the best course in all the circumstances is to enact a short but comprehensive table of heirs of both sexes within a range of three degrees.

It is also considered desirable to lay down a few very general rules as to the order of preference among heirs, as showing how propinquity may be measured in practice, and to supplement, if need be, the arrangement given in the table in its application to relatives beyond the range of three degrees. This is in conformity with the time-honoured practice in the Hindu Law, of indicating the order of succession partly through a direct enumeration of heirs, often by way of illustration, and partly through deduction from rules of general applicability.

The Committee's recommendations on the whole matter of succession are shortly and precisely embodied in clauses 6 and 7 of the Bill.

Joint Family Incidents.

Chapter III treats of Joint Family Incidents and Adoption as touching on the position of women.

Joint Family System.—The advantages served by the joint family system are first considered.

It is pointed out, at the same time, that many of those conditions which made the joint family so serviceable an institution are fast passing away. The need for self-protection from the aggression of external enemies or troublesome neighbours does not now exist to anything like the same extent in settled societies. The importance of joint wealth and of the joint satisfaction of common needs is receding into the background with the spread of the idea of individual rights and requirements.

The hereditary transmission of professional skill and acquired learning is becoming a thing of the past. The ways and habits of modern life, the keenness of competition, and the necessity for seeking employment outside the family, the tendencies gravitating towards urban life, the attractions of Government service, the pursuit of trade, and the various other avocations which draw men away from their families,—all these are causes tending steadily to undermine the Mitakshara system of joint families.

Reference is made to the special conditions in Bengal, where the process of disintegration of family law and life has been even more rapid, consequent on a marked revolution in popular feeling.

The Courts, too, have contributed not a little by their decisions to the gradual disintegration of the joint family; as in the matter of the departure from the strict anti-alienation rule of the Mitakshara, and the recognition of the principle that a coparcener can alienate his undivided share; the doctrine of the unilateral declaration of intention to divide, which facilitates the separation of a coparcener from the family; and the rule regarding "gains of learning."

Its disadvantages.—The present working of the joint family system is characterised by various inconveniences and even positive disadvantages, which are next adverted to. Shortly stated, the institution is not particularly conducive to individual exertion or collective enterprise.

It not only does not encourage enterprise, but puts a premium on idleness and obstruction, as the drones in the family can always obtain their food and clothing for the asking. Modern ways of living have led to the more or less complete disappearance of jointness in food, worship and residence, though the fiction of a jointness in estate continues. Endless rivalries and quarrels arise in regard to the management and distribution of the income; and naturally this is not conducive to the smooth working of the joint family system. The work of the manager is made difficult in various ways.

The joint family system, while it undoubtedly afforded a number of manifest advantages to the community in times past, has largely outlived its utility in the present. Under the impact of modern conditions and the consequent growth of the individualistic spirit,—with its sense of legal rights and personal interests,—it is visibly breaking up.

Operation on rights of women.—What is of immediate importance, as touching on the subject matter of the Committee's inquiry, is that the perpetuation of the system is of no particular advantage to women, upon whom indeed it has always operated with undue hardship. Under the joint family system as it actually obtains, the legal rights of women are precarious. They are not members of the coparcenary, and they cannot claim to share in the common property as of right. Even when they do obtain some property, their rights are usually fettered by all manner of limitations.

Coparcenary.—Various topics arising out of the joint family system, and having an important bearing on the legal position of women, are then dealt with.

The distinction is explained between a family, a joint family, and a coparcenary. It is emphasized that, under the Mitakshara law as now understood and administered, the coparcenary must consist invariably of males, females being regarded as incompetent to be coparceners along with males. Even a wife, though she is entitled to maintenance out of her husband's property and has to that extent an interest in his property, is not her husband's coparcener. Nor is a mother a coparcener with her sons.

The position of the coparcenary under the Mitakshara and the Dayabhaga laws is contrasted in some detail. There is no right of survivorship under the Bengal School, and a coparcenary may consist of females as well as males. This is not so under the Mitakshara law; and the doctrine of survivorship leads in practice to serious complications. It ties up property, impedes the free use and flow of wealth, makes titles uncertain and enhances the risk of litigation, and works prejudicially on the interests of women in various ways.

Rights of coparceners.—After dwelling on the legal position of a coparcener in a Mitakshara joint family, and the extent of a coparcener's right over his undivided share, the Report proceeds to consider the position with regard to the separate property of a coparcener with special reference to self-acquisitions.

Self-acquisitions.—The question of self-acquisition is one which closely, even if indirectly, affects the position of women. According to the Mitakshara doctrine, property, in order to be a man's self-acquisition, must be acquired "without detriment" to the joint estate. In early times the slightest assistance from the joint patrimony, however indirect, was considered to be such a detriment, and the possession of any joint property was considered as conclusively proving that there had been such an assistance.

Gains of learning.—The tendency of the later decisions was towards a more sensible view of the law, following out its spirit rather than its letter. It is difficult to see why a person who has made gains by science or learning, after having been educated or maintained at the family expense, should be in a worse position than any other person who has been so educated or maintained, and who has afterwards made self-acquisitions. And, certainly, where the education given to a person is not more than the ordinary education common to persons of that class of life, there is no reason whatever to treat his self-acquisitions as divisible.

The matter has, however, been since complicated by a later pronouncement of the Privy Council, which re-asserts the old rule that all acquisitions by members of a joint family are *prima facie* partible and that the burden of proof lies on those who assert the contrary. " Gains of science " are exempted from the rule only when the education which made such gains possible is affirmatively shown to have been acquired without detriment to the family estate. If, on the other hand, the income is obtained by the practice of a profession or occupation requiring special training imparted at the expense of the joint family property, then it becomes likewise joint family property.

Proposals for legislative action.—This ruling leaves the matter in a rather unsatisfactory position, which can only be put right by legislative action.

Reference is made to various proposals brought forward with this object, commencing with the unsuccessful attempt of Sir V. Bhashyam Iyengar, and culminating in the Bill introduced by Mr. Jayakar in September 1929 and since passed into law in July 1930.

Some objections considered.—The objections usually advanced against any such proposal to treat a man's self-acquisitions as his separate property are considered in some little detail.

Advantages of proposal.—The positive advantages of the proposal are also referred to; such as, that it will immensely improve the position of the female members in a Hindu family, enabling the widow and the daughter of a coparcener dying issueless to take his self-acquisitions; that it will obviate partitions in many cases and tend to preserve cordiality of relations among the members generally ; and that it will remove some serious obstacles to self-exertion and open dealing.

New Indian Act.—The Bill recently passed is confined to the acquisitions of learning defined in terms of education. It does not cover other modes of self-acquisition which may be open to a coparcener to make without the aid of education as such and without direct and material aid from joint resources. Also, it seems quite possible to express the essential idea underlying the general demand for legislation in terms simpler and more comprehensive and not less precise.

Committee's recommendation.—The Committee has accordingly drawn up a clause covering all modes of acquisitions generally, and

making it clear that the mere fact that a man may have been maintained or educated at the family expense—a right equally available to all other members of the family, does not deprive what he has earned for himself, without other aid from joint resources, of its proper character as separate property.
(*Vide* clause 8 of the Bill).

Separation by individual volition.—The Report passes on to the question of the separation of interests by individual volition. It is pointed out that it is always open to an individual coparcener to secure a way out of all difficulty by separating himself from the other members immediately after he joins service or adopts a lucrative profession or calling. From the moment when a clear expression of intention is made, there is a complete severance or partition in status, even though it be not immediately perfected by an actual partition of the estate by metes and bounds.

Recommendation.—It is considered desirable, and for the present sufficient, to declare in general terms the law as it stands in respect of unilateral separations, for the reason that that law is not as well known as it should be, and because it is a point which has a material bearing upon the rights of a coparcener's wife, daughters and other female relatives. Clause 9 of the Bill embodies this recommendation.

Right of females to shares.—The important question of the position of female members of the family at a partition of joint family property is then taken up.

The existing law in the Mitakshara provinces is summarised, and the procedure obtaining at partition explained. The position under the Dayabhaga law is also adverted to, and shown to be much more favourable to the rights of females. Whereas in all the other Mitakshara provinces a definite separate share is allotted to the wife, the mother and the paternal grandmother, this practice has been allowed to become obsolete in Southern India. And though the texts enjoin that the daughter should receive a fourth share at a partition made after the father's death, these have been explained away as meaning merely a sufficient amount to defray her nuptials.

The case of the daughter affords an instructive illustration of how even an explicit rule laid down by the texts of law in favour of women can be explained away to their disadvantage by the perversity of masculine interpreters. In the case of the wife, again, the fact that she becomes one with her husband on marriage, has been ingeniously utilized for debarring her from claiming a partition during his lifetime.

The question for consideration is whether or not it is desirable to restore, here in Mysore, that practice of allotting shares to certain female relatives which was formerly in force in Southern India, adn which is still operative in all other parts of India governed by the Mitakshara law (except possibly Bombay), a practice, moreover, which tends to give its due effect to an explicit rule enjoined by the ancient lawgivers.

Opinion of Committee.—After examining various suggestions for a radical improvement in the legal position of women, particularly in the matter of the restoration of their coparcenary status, the Committee states its own conclusion, which is to the effect that it is not now possible to restore the ancient practice to its full extent, that the right to have specific shares allotted at a partition has necessarily to be confined to a few females only, and that the extent of the shares permissible to each has also to be circumscribed to some extent.

Females eligible.—Thus, the only female relatives who, in the opinion of the Committee, should be recognised as eligible for specific shares are the widow, the mother, and the unmarried daughter and sister of every Hindu male, whether he is a member of a coparcenary or not. Their shares will naturally come out of property and interest in property belonging to him, or, if he be dead, which was vested in him at his death. His self-acquisitions will not be available as long as he is alive, but after his death should become divisible in the hands of his heirs male or female.

The share given to the unmarried girls will be equivalent to and replace various items, namely, maintenance, education, marriage and dowry, which are ordinarily, but will not hereafter, be debitable to the family property.

Extent of shares.—As regards extent of shares, it is considered sufficient to give to the widow, and to the mother, one-half each of the share of a son (or, should there be no son alive, one-half of what the husband would receive). The share of the unmarried daughter or sister should be at least a fourth of the share of a brother (or, failing him, that of the father). The share will in each case be the *stridhana* of the female concerned, carrying with it an absolute and not a limited interest.

The above recommendations of the Committee are embodied in clause 10 of the Bill.

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ADOPTION.

Operation of practice.—Certain incidents of adoption are next adverted to. The practice of adoption is, in the opinion of many, an institution of doubtful benefit to the Hindu widow. Comparatively few cases turn out successfully, so far as happiness and good feeling among the parties are concerned. Almost invariably quarrels arise between the adopted son and the adoptive mother, and the latter more often than not is driven to the wall and reduced to distress.

There are, besides, various restrictions with regard to the making of an adoption by a widow. Thus, except in Bombay, a widow cannot adopt unless she has either the authority of her deceased husband, or, where such authority has not been given, the consent of his sapindas, which, however, as a rule, there is considerable difficulty in obtaining.

Authority of widow to adopt.—The need for seeking the consent of sapindas will be obviated by empowering the widow to adopt in the absence of express prohibition by the husband, which is the law obtaining in Bombay.

Legal effect of adoption.—The legal effect of an adoption is next considered. As the law stands, the estate of the widow is immediately devested by an adoption made by her. The adopted son becomes full owner of the property, and the widow's rights are reduced to a claim for maintenance.

Pre-adoption arrangements.—The widow can, however, either before or at the time of an adoption, enter into an arrangement curtailing the adopted son's interest to a limited extent, in order to reserve and safeguard her own enjoyment of the property. But she cannot obtain thereby any absolute rights for herself over even a portion of the property, or ensure a gift of a sufficient portion for any of her daughters.

Recommendation of Committee.—In order to safeguard the normal rights of the adoptive mother, and to declare the validity of ante-adoption arrangements entered into in her interests, the Committee has drawn up clause 11 of the Bill, which for the most part reproduces the existing law, besides giving effect to the recommendation regarding a widow's authority to adopt.

Full Estate.

Chapter IV deals with Women's Full Estate or *Stridhana.*

Stridhana contrasted with general spirit of Hindu Law.—The Hindu Law, it has been said, while declaring the perpetual tutelage or, rather, dependence of women, and their general incapacity to hold property, concedes to them the privilege of holding property of certain descriptions with absolute power of disposal. The law of *Stridhana* stands, thus, in favourable contrast with the general spirit of the Hindu Law, which in other respects is, no doubt, not very equitable towards women.

It is, the Committee observes, a matter for regret, that an institution with such possibilities of beneficent growth, instead of being improved and developed on just and rational lines, has been gradually narrowed down in scope and reduced in importance, under influences unsympathetic to the growth of independent rights in women. This is in striking contrast with the liberalisation and expansion in Western societies of the law relating to women's proprietary rights.

Connotation of term.—The term "*Stridhana*" seems to have been confined originally to *sulka* or bride-price. When society expanded and became more complex, various other items of property given to women on different occasions, or acquired by them, were treated as their absolute property. Vijnanesvara attempted a comprehensive definition of *stridhana* as embracing property of every description belonging to a woman. But the tendency of later commentators, who were not so broad-minded, was to reduce the list of property that should be treated as *stridhana*, as also to circumscribe the valuable incidents of property comprised in the term. Unfortunately the Privy Council, too, preferred the narrower view.

Stridhana is, literally, "woman's wealth," and connotes the existence of full and complete powers of enjoyment and disposal over property, in contradistinction to the limited group of powers comprised in what is known as the "widow's estate."

Definition of Stridhana.—The Committee recommends that *stridhana* may be defined as comprising property of every description belonging to a Hindu female, but excluding property in which she has only a limited estate.

Reasons for intricacy of subject.—The subject of *Stridhana* is much complicated by the existence of a great diversity of doctrine on questions concerning its nature, the rights of women over it, and the order of succession to it. The question whether a particular kind of property is *stridhana* or not is made to depend on the *source* from which the property was acquired, the *status* of the female at the time of acquisition, (that is, whether she acquired it during maidenhood, coverture or widowhood), and the school of law to which she belongs. There are further distinctions with reference to the extent of the rights

possessed by the female owner. Over certain descriptions of property a woman has at all times absolute power of disposal, and over certain others she has never any such power ; while, in regard to a third class of property, her power of disposal is restrained during coverture only. There are, besides these, other differences touching the course of succession, differences based in their turn on the source of acquisition, on the status of the woman concerned, on her having or not having children of her own, and so on. These distinctions represent so many limitations and restrictions with which the rights of women, even in regard to property supposed to form " woman's wealth " *par excellence*, have been hedged round.

Distinctions unnecessary.—In the deliberate opinion of the Committee, these distinctions are unnecessary and to a large extent even mischievous. There are really only two divisions that need be considered ; namely, property obtained by inheritance or through partition, and property obtained in any other manner.

Texts and their interpretation.—The Committee next proceeds to consider the Smriti texts bearing on *stridhana*, and the interpretation put upon them.

The text of Yajnavalkya has been variously elaborated by commentators in framing their description of the several kinds of *stridhana*.

The enumeration given by Yajnavalkya terminates with the word " âdya " (meaning, " and the rest "). This Vijnanesvara has expanded into " and also property which a woman may have acquired by inheritance, purchase, partition, seizure and finding ", thereby including five distinct kinds of property not mentioned by the early sages. The result is that, according to the Mitakshara, (which occupies the foremost position among the great commentaries, and is of supreme authority in all parts of India except Bengal,) property of any description belonging to a woman is *stridhana*, conformably to its derivation. The Viramitrodaya and the Mayukha follow the Mitakshara interpretation. But the other commentaries, including the Dayabhaga, limit *stridhana* to those kinds of property alone which are enumerated in the Smritis, and exclude property inherited or obtained on partition.

View of Courts.—The High Courts were inclined to follow Vijnanesvara's gloss, though not in its entirety. But the Privy Council has ruled that property inherited or obtained at a partition is not *stridhana*. This ruling in regard to inherited property does not, however, apply to the Bombay Presidency, where a long current of decisions has firmly established that all property inherited by a woman born in the family,—as distinguished from one who, like the widow or the mother, enters the *gotra* of the deceased by marriage,—is her *stridhana*.

Share on partition.—The Committee has recommended in the Chapter on " Joint Family Incidents " that certain near female relatives, namely, the widow, the mother, and the unmarried daughter and sister, should be entitled each to a definite share for herself, and

to have such share separated off and placed in her possession. The main purpose of that recommendation, it is now emphasized, will be frustrated unless the share allotted is treated as being at the absolute disposal of the female concerned, free of all rights, reversionary or other, on the part of third persons. The allotment of the share is intended, not solely or merely in lieu of maintenance, but mainly to serve as a fund at the absolute command and disposal of the female concerned. In the case of the unmarried daughter or sister, the share given must also meet the cost of her education under modern conditions, and, what at present is a serious drain on family resources, the expenditure on her marriage including bridal gifts.

Property inherited.—Reasons in support of the Mitakshara doctrine that property inherited by a woman becomes her *stridhana* are set forth, and it is observed that there is really no authority in the Hindu Law against it. The Privy Council seems to have been misled into rejecting that doctrine by placing a too implicit reliance on the Dayabhaga interpretation of a text of Katyayana, which as a matter of fact does not relate to inherited property at all, but to immoveable property *given* by the husband.

The Committee thinks there is some force in the position that the recognition of absolute rights in all cases of property inherited by a female heir, however entirely such recognition may accord with the language and the spirit of the Mitakshara, is likely to be viewed by a large body of opinion at the present day as a somewhat radical measure. It may well be maintained that female relatives who are already in the currently accepted line of heirs deserve greater consideration than those whom it is proposed to include for the first time ; and that, among the former, those who are born in the family (though married away into other families) are entitled to more generous treatment than those who come into the family by marriage. This last is in fact the reason for the rule obtaining in the Bombay Presidency, where the daughter and the sister, for instance, take absolute estates in property inherited by them whether from males or females, whereas females married into the family take an absolute estate only where the property has been inherited from another female.

Recommendation.—The Committee favours the adoption of the Bombay rule, subject to the modification that the wife and the mother should also be included in the category of females taking inherited property as *stridhana*. Being one with their husbands, and equal progenitors with the latter of their children, and also on grounds of natural affection, sentiment and propriety, the wife and the mother are justly entitled to the same consideration as females belonging to the family by birth.

New forms of property.—There is, of course, nothing in law to prevent women owning property of any kind, even though it may not have been acquired in any of the modes enumerated by the ancient writers. These writers referred only to forms of property with which they were themselves acquainted, and they classed them as being

or as not being *stridhana*, on considerations appropriate to their times and circumstances, and with reference to the then usual modes of acquisition. Such classifications are neither exhaustive nor permanently applicable. Conditions have changed materially, necessitating an improvement in the legal position also. The question is no longer one of texts, customs or decisions, but what is best in the interests of the people and of womanhood in particular.

Inclusive enumeration recommended.—Besides the comprehensive definition already framed, the Committee recommends an inclusive enumeration of various kinds of *stridhana* in order to illustrate and supplement that definition and to make it as definite as possible. Seven kinds of property, including property obtained at partition, and property taken by inheritance, are specified in this enumeration.

Bridegroom's price.—Reference is made to a suggestion of Pandit G. Sarkar Sastri, that " the bridegroom's price, which, according to recent practice, orginating in the moral and religious degradation of the so-called educated men, is extorted by the bridegroom's party from the bride's father, must, on the similar and stronger grounds of equity, be considered to be the bride's *stridhana*, and the recipient must be held to be a trustee for her ". The Committee points out that the suggestion is not so radical as it might look. It recommends the inclusion under *stridhana* of all gifts and payments other than or in addition to, or in excess of, the customary presents of vessels and apparel, made to a bridegroom, in connection with his marriage, or to his parent or guardian or other person on his behalf, by the bride or her relatives or friends. Such a measure, even if it does not altogether discourage unscrupulous exactions of the kind, will at least ensure that the presents, often considerable in amount relative to the means of the bride's parents, enure for the ultimate benefit of the female herself and her heirs.

Rights over Stridhana.—The rights of women over *stridhana* are next considered. Shortly stated, a women is the absolute owner of her *stridhana* property, and may dispose of the same at her pleasure, if not in all cases during coverture, in all cases during widowhood. But a woman is not, as the law stands, the absolute owner of property which is not her *stridhana*, nor can she dispose of it at her pleasure even during widowhood.

Texts.—The whole law on the subject has been evolved from three texts of Katyayana and one of Narada. The Report deals with these texts in detail, and then summarises the restrictions placed on a woman's powers over her *stridhana*, depending partly on her status in relation to marriage, and partly on the nature of the property.

Restrictions unwarranted.—A married woman is held to be subject to certain restrictions with regard to the use of her property from which an unmarried woman or a widow is free. Such restrictions are shown to be quite unwarranted at the present time. Between a loving and mutually devoted husband and wife, no question can or ought to arise as to whether the one is at liberty to use the

property of the other for a legitmate common purpose. The point to be considered is not what should be the normal marital relations of a wedded pair, but what are the legal rights of each over the property of the other. There is no reason why a reservation by law is necessary as to a husband's right over his wife's possessions of any kind, any more than in the case of a right of the wife over her husband's possessions during his life.

Recommendation.—The Committee is strongly of the opinion that the matter is one of those that had best be left to married people to adjust among themselves, and that the law has no call to invest either the husband or the wife with any rights of control over the other's possessions. It recommends a clear and unequivocal declaration by law that a women's *stridhana* is at her absolute and unfettered disposal, irrespective of her status.

Succession to Stridhana.—The Report next deals with the subject of succession to *stridhana*. This is at present a matter of much intricacy and doubt, owing to the expansion of the original texts by the various Schools of law to suit their peculiar doctrines, and the tendency of commentators to multiply artificial distinctions. This leads the Committee to say : People are hardly likely to tolerate the idea of having different courses of succession to a *man's* property, however considerable in extent, according as he was a bachelor, a married man, or a widower, or was married in an approved or unapproved form, or even according to the kinds of property comprised in his estate, the times at which and the modes in which he acquired them, and so on. The primary question would simply be,—Who at the time of his death were the eligible claimants to the heritage, and what was the order of preference among them. But it is just such distinctions, based on the status of the female, the source, mode and time of acquisition, and so on, which have encumbered the much more restricted sphere of a woman's *stridhana* estate with a diversity of lines of devolution.

Fortunately, however, the Mitakshara, which is the leading authority in Mysore as in the rest of South India, recognises only one order of succession for a married woman's property of all kinds, with the single exception of the *sulka*.

Courses of devolution examined.—The Report examines in detail the different courses of devolution now obtaining in different cases.

Maiden's property.—The order of succession to a maiden's property is as follows :—uterine brothers, mother, father, father's heirs, and mother's heirs, in order of propinquity. The Committee recommends that the sister also may be grouped along with the brothers.

Married woman's property : Sulka.—In regard to the property of a married woman, the Mitakshara makes a distinction between *sulka* and all other kinds of *stridhana*. *Sulka* is, technically, the fee or gratuity for the receipt of which a girl is given in marriage. The devolution to *sulka*, according to all the sub-schools of the Mitakshara,

is : uterine brothers, mother, father, father's heirs; also, (presumably) mother's heirs. This is the same order as that prescribed in the case of a maiden. The main objection to the above is that it takes no account, either of the husband from whose family the gratuity must have originally proceeded, or of the woman's own issue if she has left any.

The course of inheritance to *sulka* is the only exception to the general rule of succession to a married woman's property. The Bengal school does not treat the case of *sulka* as being an exception, and the course of devolution is the same as for gifts generally. The brothers, mother, etc., take it only in the absence of nearer heirs. The Committee strongly recommends an assimilation of the succession to *sulka*, on the above lines, to the succession prescribed for the other varieties of *stridhana*, as being both logical and supported by textual authority, besides tending to a material simplification of the rules of succession.

Other property.—Stridhana other than *sulka* passes to : daughters, daughters' daughters, daughters' sons, sons, and sons' sons. Failing any of the above,—in other words, if the woman dies without leaving any issue,—her *stridhana* goes, if she was married in an "approved" form, to her husband and, after him, to his heirs in order of succession to him. But if she was married in an "unapproved" form, it goes to her mother, then to her father, and then successively to the father's and the mother's heirs in order.

Forms of marriage—The Report touches briefly, at this point, on forms of marriage. The ancient Hindu Law recognised eight forms of marriage, of which four were approved forms, and four unapproved The only ones now recognized are the *brahma*, which is one of the approved forms, and the *asura*, which is one of the unapproved forms. Where the father or other guardian gives the bride in marriage to a fit person, without receiving any consideration therefor from the bridegroom, the marriage is called *brahma*. But where he receives a consideration,—technically called *sulka* or bride's price,—the marriage is called *asura*, even though it may have been performed according to the rites prescribed for the *brahma* form. The test in each case is, whether any consideration (other than a mere complimentary present) was received by the father or guardian for giving the girl in marriage.

As a matter of fact, the two forms now in vogue are not confined to any particular class of persons. The Courts will also presume, unless the contrary be shown, that a marriage was in the *brahma* form, irrespective of the caste of the parties

Distinction out of date—The Committee considers that all these distinctions between approved and unapproved forms are really out of date Where there has been no valid marriage, there is no occasion to provide for the heritable rights of a husband. The rule applicable to a woman who has gone through an invalid form of marriage is the same as for a woman who has contracted no marriage at all, and for one who is by profession a prostitute. When such a

woman dies, her children are first entitled to her *stridhana*, as in the case of a married woman; but where she has left no issue, the property will then pass to her own blood relations.

Illegitimate children.—Where a woman leaves both legitimate and illegitimate children, the current view is that the legitimate children are to be preferred to the illegitimate,—which seems hard on the latter, seeing that, in addition to the brand of illegitimacy, they have the misfortune to be born without a father to care for and support them.

It is considered desirable, on grounds of humanity and justice as of convenience, to do away with the order of precedence between children born in and those born out of wedlock, in so far as succession to *stridhana* is concerned. It is, after all, a superficial and unsound view which imagines that sexual morality is promoted, and sexual immorality discouraged, by the imposition of artificial legal disabilities on the offspring of illicit connections. In any case, the modern tendency of the law is to leave more and more to the individual conscience and to social and public opinion the task of fostering virtue and dissuading from vice.

Succession to inherited property —In respect of property obtained by a female by inheritance, the Bombay law, it is pointed out, makes a distinction according as the property is inherited from another female or from a male. Property inherited from a female passes under the ordinary rules applicable to all *stridhana* property generally. Such property is taken absolutely, and it makes little difference in practice whether descent is traced from the last female owner or from the penultimate one; in either case, the person succeeding as heir, next immediately after the daughter, would be the same, namely, the daughter's daughter. There is, however, a diversity of local usage in regard to property inherited from males. So far as concerns districts where the Mitakshara law prevails, females born in the family alone take such property as *stridhana*, those married into it taking only a limited estate. It follows that the course of devolution for property inherited by a daughter is the same as for other kinds of *stridhana*.

The position as regards property inherited from a male owner is rather different in Southern India and Mysore. For a female heir takes only a limited estate, and it is the heirs of the last male owner who succeed after her death. It must be admitted that the course of succession to property of the kind in question, traced from the female heir, would not give as favourable a position to the daughter's son as if succession were traced directly from the last male owner. For, under the *stridhana* scheme of succession, the sons of daughters will come, not only after all the daughters—which is unobjectionable,—but also after all the daughters of daughters, whereas, under the rules of succession to males, the daughter's son is entitled to come in immediately after the daughters.

Recommendation.—The Committee suggests that the simplest solution is to group together, for purposes of succession, the male

and female children of the female heir. Similarly, the grandchildren may be grouped together irrespective of sex. The children or grandchildren in each group will then take simultaneously. Also, the succession in respect of property inherited from females may conveniently be assimilated to that for property inherited from males.

Preference among daughters.—The preference given to female over male issue, in the matter of succession to their mother's estate, is, it is explained, not peculiar to Hindu Law. It is based, doubtless, on the natural desire to make a sort of equitable distribution of the effects of the parents among their children, male and female. Among the daughters themselves, the Mitakshara gives a preference to those unmarried over the married ones. For this there seems little justification, seeing that the mother's wealth (unlike the father's) is not charged with the expenses of the marriage of her daughters. The further differentiation enjoined among married daughters themselves, as between those who are and those who are not well provided for, is not always easy of application. A woman who is ill provided with *stridhana* of her own may yet be very well off on account of the indulgence of a rich husband or the devotion of an affectionate son.

The Committee considers that it is best, in the circumstances, to drop all distinctions based on a comparison of individual circumstances or on status, leaving it to mutual good feeling and good sense, in this as in all other cases of partition between near relatives, to temper equality with a certain amount of generosity and unselfishness.

Other schemes of inheritance.—After adverting to the rules of distribution contained in the Indian Succession Act, and those obtaining under the Mahomedan Law, the Committee observes that it is not at liberty to recast the framework of the Hindu Law to suit its ideal of what the law should be, or to upset the long established preference of female over male issue in the matter of succession to a woman's *stridhana*, and substitute a new rule giving the sons shares simultaneously with the daughters in all her properties. It is true it was found expedient to suggest such a course in the case of one variety of *stridhana* property, namely, property inherited; but the justification for this lay in the fact that this was an item newly proposed to be included under the category of *stridhana*. It might be a very desirable thing to put male and female issue on the same footing for purposes of succession, provided that the rule of the equal eligibility of both sexes were extended to all other fields, including succession to the property of the father. Without such a radical re-casting of the whole scheme, it would not be right to alter one portion of it which happens to be specially advantageous to female heirs.

Table of succession as recommended.—The Committee has drawn up a simple and comprehensive table of succession to *stridhana* property, as shown in clause 14 of the Bill. It is based essentially on the Mitakshara scheme, divested only of one or two obsolete or

undesirable features. It reconciles the special mode of devolution to *sulka* with the general course of succession obtaining in regard to all *stridhana* property, barring the slight departure suggested in respect of property inherited. Property obtained by a female as her share will devolve under the general rules, since, assuming that any portion of it is left unconsumed at her death, the balance will usually have become merged with the rest of her *stridhana*, thereby losing its distinctive character. Instead of separate groups of heirs for maidens, for married women and for widows, all cases are dealt with as parts of the same scheme, in connection with successive stages of descent. Most important of all, no distinction is made in the matter of succession between different descriptions of property, such as property obtained as a share at partition, gifts from strangers, a woman's own earnings from labour and skill, and so on.

Estate of heir to stridhana : Recommendation—The next point dealt with is the nature of the estate taken in *stridhana* property by a female heir. The law prevailing in the various provinces is referred to, and the Bombay view shown to be in strict accordance with the general principle of the Mitakshara. The Committee accordingly recommends that the law should declare that any person, male or female, inheriting *stridhana* property shall take therein a full estate. This, it is observed, is merely an application in its integrity of the Mitakshara doctrine,—that all property passes, on the demise of the owner, to the heirs of such owner and not to the heir of any previous owner,—to the special case of a woman's *stridhana* property.

Gifts and bequests to females.—The nature of the estate devolving on women, as the result of gifts and bequests in their favour, is, the Report observes, a matter about which there was at one time a certain amount of uncertainty and misconception. It used to be thought, for instance, that wills in favour of Hindu females were subject to rules of contruction different from those applicable in the case of Hindu males or of females in other communities. There is, as a matter of fact, no rule of Hindu Law that a conveyance to a female can only carry with it the limited nature of a female estate by inheritance. The true guide in all cases has been stated by the Privy Council to be the *intention of the donor to be gathered from the language used by him.* If the words employed are clear and unambiguous, whether the donee is a male or a female, effect must be given to their plain meaning. And where words importing full proprietary rights are employed, they cannot be cut down, unless something be found in the context or surrounding facts to qualify the same, other than the mere fact that the donee is a woman or a widow,—which will not be enough.

It has also been laid down by the Privy Council that there are no technical rules for the construction of Hindu wills, that the words of a will are to be construed in their plain meaning, and that, where the language is clear and consistent, it must receive its literal construction, unless there is something in the will itself to suggest a departure from it. It has also been expressly laid down that clear

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and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention.

Nature of estate.—The Courts in India leant at one time against treating grants to widows as conveying anything more than life estates. The tendency of the later decisions is, however, it is pointed out, to construe gifts even to widows in a liberal spirit.

Recommendations.—But in order that there may be no possible doubt as to the true rule, and no occasion for qualifying it in practice, the Committee recommends that the law should declare in express terms that a gift or bequest in favour of a female shall be construed in the same manner, and shall have the same effect in all respects, as a gift or bequest in favour of a male ; also, that where property, immovable or movable, is bequeated to a female, she shall be entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for her.

Testamentary capacity of women.—It is, further, pointed out that testamentary power depends solely upon the nature of the estate vested in the person exercising it. In the case of a Hindu female, accordingly, such capacity is commensurate with her power of disposition in her life-time. For instance, income, and savings from income, of property vested in a female, whether absolutely or otherwise, as well as all accumulations and investments made out of them, which are not definitely treated as accretions to the property inherited, are undoubtedly her *stridhana*, which she is perfectly competent to dispose of by deed or by will.

Limited Estate.

Chapter V deals with Women's Limited Estate.

Position of widow.—Referring to the position of the widow, the Report says :

"Every one must be familiar with the Hindu widow's lot, which, legally as well as socially, is a very hard one. A man's wife, or it may be his daughter-in-law, lives in comfort, if not in affluence, as long as her husband is alive. But the moment he dies, the widowed woman is reduced to a miserable plight. She is at the mercy of coparceners, and, in place of comfort, must be content at best with a bare subsistence."

"The life proper to a widow is affirmed by various Hindu jurists of the past to be a life of utter self-denial. Abstemiousness and sacrifice are admirable virtues ; and persons of both sexes and of every class and station would be all the better for practising them in due measure, and of their free choice. But when the practice of them is imposed mainly as a convenient reason for curtailing the normal rights of one sex or of one particular class of persons, and—worst of all—for keeping a bereaved widow in compulsory wretchedness and humiliation, the injunction loses much of its ethical savour."

Harshness of law.—The harshness of the law towards widows, and the oppressive disabilities placed on them, have been attributed to a sacerdotal origin. But there is, the Committee considers, reason to think that in the Vedic age, and for a considerable period afterwards, the position of the widow was not disadvantageous. But the ancient texts were explained away by subsequent commentators and interpreters, and the widow was gradually denuded of her rights. The present position of women under the Mitakshara law is not so favourable as that under the Dayabhaga law of Bengal, and is much worse than that accorded by the Mohamedan law to Moslem women, or by the law applicable to Indian Christians. The widow under the Mitakshara law only succeeds to the property of her husband when he was separated from his coparceners and not afterwards reunited. Under the Bengal law she succeeds to her husband's interest even in undivided property.

Nature of estate of female heir.—The nature of the estate taken by female heirs is then considered.

Except in Bombay (where a female takes absolutely, if the succession is to a female owner, or to any male in whose *gotra* she or her mother is born), a female who succeeds as heir takes only a limited estate in the property inherited by her ; and on her death the property passes, not to her heirs, but to the next heir of the last full owner.

Higher than a life-estate.—The estate of a widow is, nevertheless, very different from and indeed something higher than a life estate. The whole property is for the time vested in her, absolutely for some purposes, though in some respects for only a qualified interest. She is entitled to the possession of the property without restriction ; and

she has a qualified power of disposition in it, the limits of which depend upon the particular circumstances in which it is exercised, and upon its conformity to general principles. She can in certain circumstances convey the absolute title to property in her hands, but cannot transmit it to her heirs after her death.

For practical purposes the widow's estate may be regarded as characterisable mainly by the restrictions placed on the holder's powers of alienation. She can freely and fully enjoy the income from the property, but cannot ordinarily alienate the property itself except for purposes of "legal necessity."

Reasons for limitation of rights.—After pointing out that there is very little authority in the texts of Hindu Law for restricting the rights of women over property inherited by them, the Report examines, one by one, the arguments by which limitations of the powers of women are usually sought to be justified, and shows them to be untenable.

Reversioners.—The Report then takes up for consideration the position of reversioners. The limitations attached to a woman's estate in property acquired by inheritance or by partition are, it is observed, the inevitable result of the joint family system, and of the desire to keep property within the circle of the family of acquisition. These in their turn have led to the excessive elaboration of that creature of modern judge-made law, the Hindu Law reversioner.

Reversioners unknown to earlier law.—The earlier law of the Hindus, it is pointed out, does not appear to have recognized reversions and reversioners, in the sense in which they are employed at the present day. The English lawyers, who presided over our courts during the latter end of the eighteenth and the early part of the nineteenth centuries, borrowed the term from the English law and applied it to a somewhat analogical conception in Hindu Law.

Nature of reversioner's interest.—The nature of the reversioner's interest is next considered. It is not a present right or even a vested interest, but a mere contingency, a possibility of succession in the event of the person concerned surviving the owner of the limited estate. The law as evolved by the decisions of courts has been somewhat over-solicitous about the protection of this contingent interest, recognising a right in the reversioner to interfere with the powers, acts and even enjoyment of the limited owner in various respects.

Release.—One result of the doctrine of the Hindu Law reversioner is to make it as difficult as possible for the qualified owner to get rid of her limitations. For even the next reversioner for the time being (or all of them, where there are more than one) cannot, by the most unqualified and complete release of his expectancy in favour of the limited owner, enlarge her interests.

Surrender.—On the other hand, the next reversioner for the time may obtain a relinquishment or surrender of the limited owner's

estate, and thereby accelerate his own succession. But the relinquishment or surrender must be unconditional, and extend to her entire interest in the whole of the property comprised in the estate.

Also, a Hindu widow cannot surrender the bulk of the property to the nearest reversioner, with the view of relieving herself of the troubles and responsibilities of limited proprietorship, and of being content with a minor part of it left at her absolute disposal. Often enough such an arrangement might be quite prudent and desirable, and to the manifest advantage of both parties. Nor can she, when surrendering the whole, stipulate for a portion of it being given to some one else in whom she is interested.

Alienations.—The question of alienations to third persons is then considered, as also the possibilities open to the remoter reversioners of getting over the effect of consent given by the next reversioner.

Position of reversioner and limited owner contrasted.—After referring to various other rights and remedies available to reversioners, the Report proceeds :—

In practice, the obstacles in the way of a female owner of a limited estate, not merely enlarging her estate, but even exercising powers which may be necessary in the ordinary course of her mangement, are continuous and practiaclly insurmountable. The reversioner, on the other hand, is doubly benefited. Inasmuch as a reversioner is presumed to act in a representative capacity, the fruit of action taken by one enures for the benefit of all. But since one reversioner does not derive his right to sue from or through another, he is in no way prejudiced by the failure of the latter to take any necessary steps, as, for instance, to contest the validity of an adoption. It would almost seem as if the position of the reversioner in relation to the female heir might be expressed by the formula "heads I win, tails you lose!"

Position summed up,—Summing up, the Report says: "It is obvious that, though in theory the right is strictly limited to the requirements of protecting the property from damage, it involves to an indefinite extent the power of questioning the acts of the limited owner, and of interfering with those acts, both directly through the instrumentality of the Courts, and indirectly by causing fear, annoyance and harassment to the female by threats of litigation; and occasionally of rendering positive disservice by frightening away people from dealing with her as owner even in cases of assured necessity.

It is added that the statistics of litigation everywhere in India show that a noticeable proportion of it consists of suits and proceedings by or against reversioners.

Enlargement of womens' powers.—The directions in which women's powers may be enlarged are examined at some length; and the following suggestions offered :—

Committee's suggestions.—"It would be possible, of course, at one stroke as it were, to give them full dominion over such property, by

abandoning the conception of a limited estate altogether, and placing a woman's estate on the same footing in all respects as a man's; in other words, by regarding all property inherited by a female as her *stridhana*. This, in every probability, is the ideal towards which conditions will eventually tend; but, as far as can be judged, it is not yet well within sight. In the present state of Hindu society and public opinion, it may be looked upon as too radical a measure to give every female heir an absolute estate over property in which other persons have also hitherto had a near reversionary interest.

"But a substantial approach towards the goal of absolute rights is very desirable and necessary, and seems quite practicable. This is so, first, in regard to the self-acquisitions of a person, male or female. Subject to any disposition which such person is desirous and competent to make, self-acquisitions may well descend absolutely to the next heir, irrespective of sex; for in this case the natural desire of coparceners to retain property within the family does not come into play, since the property is not ancestral, and the interests of reversionary heirs as such do not require special consideration.

"Secondly, and as a preferable alternative, in regard to such females as are closely related to the deceased owner by blood, that is to say, those born in his family, such as the daughter, the sister, the niece and the aunt, the rule long established and in force in the Bombay Presidency may be adopted, and they may be permitted to take his property (self-acquired or other) absolutely, that is, with all the incidents of *stridhana*. To these relatives should certainly be added the mother from whose body the deceased was born, and the wife who, according to the ancient texts, becomes one with him on marriage. Other females who come into the family of the deceased by marriage but are not one with him in blood, such as the son's widow, may, as at present, take a limited estate; but where they inherit the *stridhana* property of a female owner, they should, as in Bombay, take it absolutely as full owners.

"Thirdly, in the case of female heirs who will still continue to have only a limited estate, their powers require to be enlarged to a reasonable extent, and the limitations conditioning the exercise of such powers minimised as far as possible."

Powers of limited owner.—Addressing itself to this last point, the Committee notes first what is the extent of the powers of a Hindu female heir at the present time.

The estate taken by a widow or other female, in property inherited by her from a male, may best be described by saying that she is the owner thereof for life, and has absolute power of disposal over its income. She may spend such income on herself or give it away as she likes during her life-time; she is not bound to save any part of it. She can also sell her *life interest* in the property or mortgage it, or make a gift of it to any one she likes.

While any alienation by her of property comprised in the estate is binding on herself, and valid to the extent of her own interest in

the property, she has, from the very nature of the case, no interest therein after her death which can be disposed of by will.

She cannot sell the *corpus* of the property or mortgage it or make a gift of it, or grant permanent or long-term leases, unless it be for "legal necessity," or with the consent of the next reversioner (or next reversioners, if there be more than one).

Subject to the aforesaid restraints on alienation, a female heir holds the property absolutely, and is entitled to manage it as a prudent manager would do.

Legal necessity.—Where an alienation is made by her for "legal necessity," or with the consent of the next reversioners, it passes an absolute estate to the alienee to the same extent as an alienation made by a full owner.

"Legal necessity" when employed in connection with the powers of alienation of a limited owner, has a somewhat special, an almost technical, meaning, which is explained.

Purposes recognized.—The purposes recognized by judicial decisions from time to time, as justifying an alienation by a Hindu widow, are enumerated, and grouped under the heads "religious" and "temporal."

A widow has a larger power of disposition for religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, than that which she possesses for purely worldly purposes. This distinction, however, the Committee considers, is without adequate justification at the present day. The limited owner should have the same power of dealing with her property for secular purposes as she is admitted to have for spiritual ones.

Personal and other requirements.—With reference to the personal requirements of the limited owner, and the requirements of the female relatives who are entitled to be maintained out of the property (and, if unmarried, to have their marriages performed at the cost of it), the Committee considers that a clearer definition and some extension of the powers of the female owner are particularly called for.

The law as it stands treats the personal requirements of the qualified proprietress as virtually equivalent to a right of maintenance. It is suggested in the Chapter on Maintenance that, in fixing the amount of maintenance, regard should be had, among other things, to the reasonable wants of the female concerned, and that the expression "reasonable wants" must include, not only the ordinary expenses of living, such as food, raiment and residence, but also provision for such religious and social duties and functions as are incidental to the station in life of the female, and likewise, where necessary, reasonable provision for her educational and cultural needs. The scale of reasonable requirements in the case of a female owner cannot be less wide than that considered sufficient and necessary for one entitled only to maintenance. In all cases the Courts must have an intelligent and sympathetic regard to changed times and conditions

generally, as well as to the position in life and society of the female owner concerned.

In addition to her own personal requirements, there are the requirements of those in whom the proprietress will naturally be interested, for which she should have the power to provide—such as the upbringing, education, marriage, dowries and settlement in life of her female children or grandchildren.

Consent of reversioners.—The consent of reversioners is at present of use, not so much because it will allow of a wider exercise of powers by the female heir, as because it may be serviceable to the alienee, as being presumptive proof of necessity which, if not rebutted, will validate the transaction as a right and proper one.

This, the Committee thinks, does not go very far. Reversioners, as a rule, cannot be expected to assist in the furtherance of acts which are *prima facie* detrimental to their interests. Also, there is the risk that the consent of some reversioners may be impeached by others. And then, again, it is always a difficult if not impossible condition to comply with, that "ordinarily the consent of the whole body of persons constituting the next reversion should be obtained."

After all, consent, even when obtained, is only of evidential value, as helping to raise a presumption. It in no way operates by itself to cure or authorize a defective or unauthorized alienation. And it is liable to be impeached.

Proper effect of consent or ratification.—If consent, or ratification (which stands on the same footing as consent), is to be of real use, it must, says the Committee, be treated as having the same effect, in relation to a Hindu female heir, as it has in regard to limited heirs under other systems of jurisprudence. It must be placed, at the least, upon the full basis of a family arrangement or compromise, entered into by those who are parties to it in a representative character on behalf of the estate as a whole, and as such binding both on the limited heir and on the whole body of reversioners, including those who may subsequently be born.

Recommendation.—An alienation consented to or ratified by the next presumptive reversioner should be effectual to pass the full title. Such consent or ratification should be binding upon the reversion as a whole; and no right of impeachment should be recognized on the part of a reversioner whose interest comes subsequently into existence.

Desirability of summary procedure.—The Committee also suggests that provision should be made in the Code of Civil Procedure for a reference to Court, either by a female owner or by an intending purchaser, mortagagee or lessee, in cases in which it is found difficult to procure the consent of the next reversioners as a body to the transaction, and for a swift and summary adjudication upon such reference after notice to all concerned, and after hearing the objections, if any, of recalcitrant reversioners. Such a procedure will help materially to strengthen titles, by removing the uncertainties often surrounding them, and likewise to minimise subsequent litigation.

Release in favour of limited owner—It is at present impossible for a female heir to get rid of her limitations, and to obtain an enlargement of her interests to those of a full or absolute estate. It is open to a Hindu female to obtain an absolute title to property from a stranger. It is even possible for her to acquire such a little by adverse possession in her own right as against coparceners and reversionary heirs. But it is held to be impossible for her by peaceful arrangement to obtain an unqualified title to property inherited by her and in her possession, even if the whole body of immediate reversioners release their interests unconditionally in her favour for good consideration.

Recommendation.—The Committee is strongly of the opinion that the rule should be altered, and that it should be made possible and competent for the next immediate reversioners to release their interest in favour of the female owner, with the result of converting her limited estate into a full, absolute and unqualified one.

Surrender need not be complete or unconditional.—Connected with the effect of a release by the next reversioners in favour of the female heir is the question of a surrender by the female heir in favour of them. A surrender, in order to be valid, must at present be a surrender of her own interest in the whole estate in favour of the nearest reversioner or reversioners. In other words, it must amount to a voluntary "effacement" of the female heir, as complete as in other circumstances would be effected by her death.

The Committee points out that such a view may be logical enough as a matter of abstract theory; but it is most inconvenient in practice. It is very unreasonable to veto a surrender or relinquishment because it does not extend to the whole of the property comprised in the estate of the limited heir, or because it may provide for or contemplate some benefit to the female owner in the way of or in addition to maintenance, or some other return or compensation. Even a partial surrender, or a surrender for consideration, may not only benefit the female herself, but in almost every case be of direct advantage to the next reversioners, who will be able to enter at once upon possession of the property or the bulk of it, instead of awaiting the death of the female heir.

Accumulations and investments of income.—The treatment of accumulations and investments of income derived from property inherited by a widow or other limited owner, is next taken up.

Though there has been some difference of opinion, it is now settled that the intention of the female owner is what really determines the character of the accumulation or investment in each case. The Committee adds that, unless there is clear proof of a deliberate intention on the part of a female heir to treat as part of the original estate what she is strictly entitled to regard as property at her absolute disposal, no inference adverse to her interests should be drawn from her acts.

In all cases of purchases and investments made by a limited owner out of income at her absolute disposal, the presumption, in the absence of unmistakable indications of intention to the contrary,

should be that they were intended for her personal benefit, and therefore are her *stridhana.*

Recommendations for legislative action.—The chapter closes by briefly indicating the various points on which legislative action is required. The more important of these are alone noted below :—

The recommendation made under "Women's Full Estate", that a female inheriting property from another female, or from a male relative connected either by blood or as her husband or son, should take it absolutely, has to be supplemented by a provision that in all other cases she takes only a limited estate. It will be convenient to provide in this connection for a limited estate being converted into a full and absolute estate through a release of the next reversioner's interest.

The exact nature of a limited estate can best be gauged by what the owner of it is or is not entitled to do. In reproducing the existing law on the point, the scope of "necessary purpose" is somewhat amplified so as to cover all those requirements which are necessary or reasonable in the present conditions of social life. Also, assent, ratification, or intentional acquiescence on the part of the next reversioner, instead of being merely presumptive evidence of necessity, which evidence is capable of being rebutted, is proposed to be treated as itself sufficient authority for an alienation by a limited owner.

Assessment of maintenance.—After explaining the principles on which maintenance is now assessed, the Report observes that Courts as a rule are not over-liberal in the amounts awarded by way of maintenance to females. The tendency, if any, is generally to fix too small a sum. Various considerations of a restrictive character are often introduced in practice in determining the reasonable wants of the claimant.

Reasonable Wants.—It is most essential, in the opinion of the Committee, to give the expression "reasonable wants" a broad and generous interpretation, in consonance with conditions and tendencies obtaining at the present day. Old time conceptions of austerity and self repression should not be the sole consideration. Proper regard must be had to the rising aspirations of womanhood and the changing values of human motives and ideals.

Recommendations.—Reasonable wants should, in any case, be understood as including provision, not only for religious and ceremonial but also for social duties and functions incidental to the station in life of the woman concerned, and also, where necessary, reasonable provision even for educational and cultural needs. Thus, an unmarried duaghter or sister should have the right, not only to be married away at the proper time, but, as long as she remains in the family of her birth, to receive an education suited to her capacity and the means of the family, to the same extent as her brothers. A discarded wife should be free to develop the higher sides of her nature, to cultivate latent talents, or to qualify herself for useful positions in life, and not be constrained to live a gloomy life of repression, asceticism, or domestic drudgery.

Once the amount of maintenance considered proper in a particular case has been determined by agreement or decree of court, it should not be permitted to be varied to the prejudice of the female concerned, in the absence of a material change in the determining circumstances.

All these recommendations are given effect to in the Bill.

Chargeability of property.—Lastly, the important question of the chargeability of property on account of maintenance is dealt with at some length.

As already pointed out, the obligation as to maintenance is in some cases entirely personal in character, arising simply from the fact of relationship. In other cases it arises from the circumstance that, when the property of a person who lay under such an obligation (legal or moral) passes by inheritance on his death, the heir takes it subject to the obligation. In other cases, again, the liability attaches to the manager of a joint family who is in possession of family property. But in none of these cases is the claim to maintenance really a charge, either upon the assets of the person personally liable, or upon the property in the possession of the heir or the manager. It may, as the law stands, be made a charge on property under the will of a person bequeathing property, or by agreement between the

person entitled and the person who is liable or by decree of a competent Court. Otherwise the right to maintenance, even of the widow of a deceased owner, is liable to be defeated by the transfer of his property to a *bona fide* purchaser without notice of her claim, or even to a purchaser with notice but without knowledge of an intention to defeat the claim.

Necessity for charge.—The only way, the Committee considers, of effectually safeguarding the right is to treat the same as a charge upon the whole of the property, if any, liable to meet it, leaving it to the parties concerned by agreement, or to a competent Court by decree, to confine the charge to a specific portion of such property.

The right to maintenance will thus also acquire priority over all personal debts of the person or joint family concerned, and over all subsequent encumbrances or transfers of the property charged, whether made with or without notice of the claim to maintenance.

After dealing with various objections (more or less plausible, but usually much exaggerated,) apt to be brought forward against any effective remedy in this matter, the Report proceeds;

Safeguards for maintenance right and rights of third persons.—"Where safeguards are a matter of necessity, it is futile to indulge in lamentations over incidental inconveniences. It is in fact largely owing to one-sided objections like those we have noticed, that the right of near relatives to maintenance has hitherto been subordinated to the conveniences of the stranger-creditor, or the whims of the profligate husband, and thereby rendered more or less precarious in its nature. We must perforce strike a balance between various considerations, never forgetting that here is a present evil and persistent injustice calling for remedy, and that, unless the remedy is really effective, there will always be found means of defeating or evading it."

Recommendations.—In the opinion of the Committee, it is for those who hold the property burdened with the liability, and for those seeking to deal with them, to take steps to limit the charge on account of maintenance, to a defined and specific portion of the property primarily liable. This can be easily provided for. It will also be desirable to provide that any person who may have acquired any portion of such property for consideration, and without notice of any fraudulent intention, is at liberty to require that the claim must first be satisfied out of other property remaining undisposed of, before it is enforced against that alienated to him.

It is further necessary to make specific provision for the case where a wife is entitled to demand separate maintenance from her husband. The right in such cases is liable to be defeated unless it is made a charge upon the assets of the husband and given priority over his personal debts. But in order that third parties may have notice of the charge, and in order also to obviate abuse or collusive action, it should be provided that the claim must be made in writing, and that it must also be registered.

Of course, alienations made by the husband in good faith for a necessary or reasonable purpose, and without intent to defeat the right, must be recognized, as also alienations made by the manager of a joint family in good faith for legal necessity.

These and other safeguards, which may be reasonably required for ensuring that the charge on property will not impose undue restraints on legitimate dealings with property, have been carefully considered and provided for in the Bill.

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